

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC**

Application of)	
)	
Cabo Express, Inc.)	
)	Docket DOT-OST-2022-_____
for an exemption pursuant to 49 U.S.C. § 40109)	
from the provisions of 49 U.S.C. § 41101)	
(indirect air transportation))	

APPLICATION OF CABO EXPRESS, INC. FOR AN EXEMPTION

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March 11, 2022

NOTE: Any party may support or oppose this application by filing an answer in the above-referenced docket. Answers are due on or before March 28, 2022.

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APPLICATION OF CABO EXPRESS, INC. FOR AN EXEMPTION

Pursuant to 49 U.S.C. § 40109 and 14 C.F.R. Part 302, Cabo Express, Inc. ("Cabo Express"), a Delaware corporation, hereby requests an exemption from the requirements of 49 U.S.C. § 41101 and the Department's economic regulations to the extent necessary to operate indirect air transportation of persons and property, as described below.

I. Introduction

Cabo Express plans to contract with a U.S. certificated air carrier to provide air transportation of its members between the Los Angeles and San Francisco/Oakland areas, on the one hand, and San Jose del Cabo, Mexico, where they maintain vacation or second homes in six exclusive residential and recreational communities, on the other hand. The exclusive Cabo Express program is modelled after other similar programs that offer a specialized air service for a limited number of owners of second or vacation homes in exclusive high-end residential communities. The flights will not be held out to the public and will be available only to the members of Cabo Express.

The Cabo Express member program and operation is consistent with other exemptions that the Department has previously granted to other similar member programs. See, e.g., Kona Associates, DOT Order 2004-8-8; The Yellowstone Mountain Club, DOT Order 2012-2-1; Baker's Bay Associates, Notice of Action Taken ("NOAT"), dated June 6, 2012 (Docket DOT-OST-2012-0053); Kona Express, NOAT, dated April 11, 2018 (Docket DOT-OST-2018-0013); Maui-Kauai Shuttle, NOAT, dated August 27, 2021 (Docket DOT-OST-2021-0047); Hawaii Shuttle, NOAT, dated August 27, 2021 (DOT-OST-2021-0034); ROAM Maui, NOAT, dated August 27, 2021 (DOT-OST-2021-0065).

II. Cabo Express

Cabo Express is a corporation recently incorporated in Delaware. Its business is to make available to residents of certain small, high-end, exclusive named communities (described below) private jet transportation between the U.S. mainland and San Jose del Cabo, Mexico, as described herein. Membership will be made available only to eligible persons, and members will not hold an equity interest in Cabo Express. Membership will be by personal invitation only and limited to only 300 members. There will be no advertisements, mailings or mass solicitations to the general public about the membership program and services. Potential members are invited from among members and residents of these small, private, high-end exclusive communities.

Members of the Cabo Express program will sign a detailed membership agreement, which provides the precise terms of their membership, flight privileges, and payment and potential refund structure. Members of the Cabo Express program will pay an initiation fee up-front once membership is formally activated, and thereafter members

will pay substantial annual dues. These sources will fund Cabo Express' capital and the operation and upkeep of the aircraft and associated management fees. Members will not be charged per flight, nor will they pay any additional amounts related to the extent of their aircraft use. Memberships will not be transferable, but may be sold back to Cabo Express under certain enumerated conditions. Upon termination of the program, any remaining funds in each member's account for the current membership year will be returned to the member.

III. The Communities

The communities in and near San Jose del Cabo and Cabo San Lucas, Mexico, that are part of the Cabo Express program are:

Chileno Bay Residences (<https://chilenobayresidences.com/>). These luxury villa residences are part of the Chileno Bay Resort and Residences complex in Los Cabos, which is part of the Auberge Resorts collection.

Chileno Bay Golf and Beach Club (<https://chilenobayclub.com/>). This is an exclusive members-only community covering 1,200 acres. It has 400 residences, including custom homes, villas, haciendas, and casitas, with 24-hour guard-gated security.

Costa Palmas (<https://costapalmas.com/>). This community is in the East Cape area, on the Sea of Cortez, east of San Jose del Cabo. The 1,000-acre community includes Four Seasons Private Residences, which are part of the Four Seasons Resort and Residences, and Amanvari Residences, which are part of the Amanvari Resort and Residences.

El Dorado Golf & Beach Club (<https://eldoradobeachclub.com/>). El Dorado Golf & Beach Club is one of Discovery Land Company's exclusive, members-only residential communities, with villas, custom homes, and casitas on the coastline of the Baja Peninsula between San Jose del Cabo and Cabo San Lucas.

Maravilla (<https://maravillaloscabos.com/>). Maravilla is an exclusive, intimate residential community of 230 members with a one-of-a-kind location on two of Cabo's most coveted swimmable beaches.¹

Montage Los Cabos Residences ("MLCR"). MCLR is part of the Montage Los Cabos Resort & Residences and has only 52 residences overlooking Santa Maria Bay. (<https://www.montageresidencesloscabos.com/>).²

These six communities are private, high-end, and exclusive residential communities and resorts.

IV. The Operation

Flights of the Cabo Express program will be operated by a DOT-certificated Part 121 air carrier. At this time, Cabo Express envisions 2x or 3x weekly service between the Los Angeles and San Francisco/Oakland areas, on the one hand, and San Jose del Cabo, on the other hand, with the possibility of extra sections during peak travel periods.

Consistent with prior exemptions granted by the Department to similar member programs, flight privileges will be strictly limited to members, their families, household staff, and invited guests. No sale, trade or any sort of compensation in exchange for transportation will be permitted. Members will be guaranteed a certain number of flights

¹ See also <https://twindolphinloscabos.com/membership/>

² See also <https://twindolphinloscabos.com/membership/>

per year, based on the level of membership for which they pay, and will be eligible for stand-by status for other flights.

The costs of the flights will be paid entirely out of the funds paid in by the members. Members will each have their own accounts, to be used entirely for air transportation purposes. If the normal initiation and membership fees are inadequate in a given year to pay the cost of the flights (plus overhead), members may be charged an additional fee to cover the shortfall. If there is a surplus at the end of the year, that will be paid forward to cover the costs of the following year or otherwise handled consistent with the membership agreement.

As is the case with other similar programs, publicity about the operation will be greatly restricted. Potential members will not be solicited from the general public, but only from residents or management of the six private, exclusive, high-end communities described above, and managers of the corresponding community associations.

V. Need for Relief

Since it will be engaged in arranging, but not operating, air transportation for its members, Cabo Express will act as an indirect air carrier.³ The kind of transportation being offered to the members, however, is not amenable to the traditional regulatory requirements and protocols of 14 C.F.R. Part 380 or 14 C.F.R. Part 212. Thus, relief from these provisions is necessary to enable Cabo Express to provide the limited services

³ The Department has previously determined that other companies with similar member programs were engaging in a “type of indirect air carrier activity for which authority is required.” See, e.g., ROAM Maui, NOAT, dated August 27, 2021 (DOT-OST-2021-0065); Hawaii Shuttle, NOAT, dated August 27, 2021 (DOT-OST-2021-0034); Kona Associates, DOT Order 2004-8-8; Maui-Kauai Shuttle, NOAT, dated August 27, 2021 (Docket DOT-OST-2021-0047).

contemplated. The conditions proposed, and the unique characteristics of the members involved, should fully allay any perceived risk to this particular narrow segment of the public. Indeed, as explained below, the Department has found this sort of very restricted exemption to be in the public interest in other instances, and the same considerations support such a finding in this case. Cabo Express agrees to be bound by the conditions or restrictions that the Department has typically imposed on the exemptions granted to other similar member programs.

VI. Department Precedent Supports Granting the Requested Exemption

The Cabo Express member program and operation is fully consistent with other exemptions that the Department has previously granted to other similar member programs. See, e.g., Kona Associates, DOT Order 2004-8-8; The Yellowstone Mountain Club, DOT Order 2012-2-1; Baker's Bay Associates, NOAT, dated June 6, 2012 (Docket DOT-OST-2012-0053); Kona Express, NOAT, dated April 11, 2018 (Docket DOT-OST-2018-0013); Maui-Kauai Shuttle, NOAT, dated August 27, 2021 (Docket DOT-OST-2021-0047); Hawaii Shuttle, NOAT, dated August 27, 2021 (DOT-OST-2021-0034); ROAM Maui, NOAT, dated August 27, 2021 (DOT-OST-2021-0065).

For example, the program, as proposed, covers six private, exclusive, high-end communities and service from two U.S. gateway metropolitan areas (Los Angeles and San Francisco/Oakland), consistent with other similar programs that have been granted exemptions. See, e.g., Maui-Kauai Shuttle, NOAT, dated August 27, 2021 (program includes six residential/recreational compounds and two U.S. gateways); Hawaii Shuttle, NOAT, dated August 27, 2021 (Hawaii Shuttle, program covers five residential/recreational compounds and two U.S. gateways); ROAM Maui, NOAT, dated

August 27, 2021 (program includes five exclusive residential communities on Maui and three U.S. gateways). Moreover, the Cabo Express program is limited to 300 members, which is less than some other approved member programs. See, e.g., DOT Order 2012-2-1 (Yellowstone Club, 350 members); Notice of Action Taken, dated August 27, 2021 (ROAM Maui, 360 members); Notice of Action Taken, dated June 6, 2012 (Baker's Bay Associates, 395 members). Finally, the Cabo Express program is willing to be bound by the conditions or restrictions that the Department has typically imposed on the exemptions granted to other similar member programs.

VII. Conclusion

For the reasons explained above, Cabo Express requests that the Department grant it an exemption from 49 U.S.C. § 41101 and the Department's economic regulations, including charter rules, to the extent necessary to enable it to engage in indirect charter passenger air transportation, on the limited basis described herein, and any and further relief as the Department may deem necessary and advisable.



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Certificate of Service

I hereby certify that a copy of the foregoing Application of Cabo Express for an Exemption has been served this March 11, 2022, upon each of the following addressees by electronic mail:

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